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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,586	12/03/2003	Pil-Ho Yu	1349.1337	3450

21171 7590 01/10/2008
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EXAMINER	
LEE, JOHN W	

ART UNIT	PAPER NUMBER
2624	

MAIL DATE	DELIVERY MODE
01/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/725,586	YU, PIL-HO	
	Examiner	Art Unit	
	John Wahnkyo Lee	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *11-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner. *

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The response received on 29 October 2007 has been placed in the file and was considered by the examiner. An action on the merits follows.

Response to Amendment

2. The applicant's amendments filed on 18 October 2007 have been fully considered.

Response to Arguments

3. Applicant's arguments filed on 18 October 2007 have been fully considered but they are not persuasive.

RESTRICTION RECONSIDERATION REQUEST

The applicant had pointed out the errors of the examiner's restriction without explicitly mentioning the election of specifies will be made with or without traverse. The MPEP discloses that "If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse". However, it does not mean that the applicant elected with traverse even though the applicant pointed out the errors of the restriction. If the sufficient condition is not met, it is not right the necessary condition will be satisfied. So, the examiner will consider the applicant has elected without traverse for the further prosecution.

Based on 37 CFR 1.146, MPEP says "In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one

patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application." Species I and Species II are distinctive. Species I and II measures the noise in a different way. Species I comprise a block average calculator dividing individual pictures of an input image signal into blocks and calculating average luminance values for a plurality of the divided blocks and a delay separately delaying the pictures of the input image signal by one period; species II comprise calculating an absolute difference between an average luminance values of a block of pixels of a first picture of an image signal and an average luminance value of a block of pixels of a second picture of the image signal.

Moreover, election of species restriction does not require the examiner to cite different classes and subclasses based on MPEP 809.02(a).

Therefore, the restriction will not be withdrawn, and the examiner will only consider claims 1-10 which can be read by Species I that the applicant has elected on the previous response to election/restriction.

REJECTION UNDER 35 USC § 103

The MPEP 2143 discloses that "the Supreme Court in KSR International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with

the proper "functional approach" to the determination of obviousness as laid down in Graham. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." In addition, MPEP 2143 discloses the exemplary rationales that can support a conclusion of obviousness. So, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Suzuki's invention and Wittig's invention in De Hann's invention to provide a more reliable method and apparatus for noise measurement (De Hann (col. 1, lines 49-50) which is a simple substitution of one known element for another to obtain predictable results or is using known technique to improve similar devices (methods or products) in the same way.

The examiner agrees with the applicant that Wittig does not use the exact same way with the applicant does. However, it does not mean that Witting does not disclose or suggest the claim limitation, "selecting a desired number ... " The clause of the last claim limitation of claim 1, "smallest value toward large value" is not clear from the claim whether it is indicating picture noise, absolute difference calculated by SAD calculator, or something else. So, Wittig's invention using counter for selecting SAD values falling within the range is selected can read on the claim limitation. Thus, Wittig discloses a picture noise selector (Fig 1-16, "noise estimate block"; paragraph [0014]) selecting a desired number-th arranged absolute difference (paragraphs [0014]-[0015]), of a plurality of calculations from the SAD calculator (Fig. 1-10, "SAD"; paragraph [0012]) for

the input image signal (paragraph [0012]), as a picture noise when absolute differences calculated by the SAD calculator are arranged (paragraphs [0014]-[0017], "counters"), in turn, from a smallest value toward a largest value (paragraphs [0014]-[0017], "SAD value range"); Wittig does disclose the claim limitation, "a picture noise selector ..." and can be combined with De Hann and Suzuki for a valid rejection under 35 USC § 103.

Moreover, as discusses above, The MPEP 2143 discloses that "the Supreme Court in KSR International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in Graham. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." In addition, MPEP 2143 discloses the exemplary rationales that can support a conclusion of obviousness. Following the examples of the rationale on MPEP 2143, De Hann's invention and Wittig's invention combinable from the rationales such as prior art is a simple substitution of one known element for another to obtain predictable results or using known technique to improve similar devices (methods or products) in the same way.

Therefore, the rejection under 35 USC § 103 is valid by combining De Hann, Wittig, and Suzuki; the rejection of claims 1-10.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Wahnkyo Lee whose telephone number is (571) 272-9554. The examiner can normally be reached on Monday - Friday (Alt.) 7:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John W. Lee
(AU 2624)

JINGGE WU
SUPERVISORY PATENT EXAMINER